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OFFICE OF PETITIONS

In re Application of :
Costa et al. :
Application No. 09/942,260 : LETTER REGARDING
Filed: August 28, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket No. 8285/448 :

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)," filed August 22, 2005, notifying the Office of an error in applicants' favor in the initial determination of patent term adjustment. Applicants request correction from five hundred ninety-nine (599) days to five hundred ninety-eight (598) days of patent term adjustment.

The request for correction of the initial determination of patent term adjustment (PTA) is granted to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is five hundred eighty-four (584) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 24, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 599 days. Applicants disclose that the period of reduction pursuant to 1.704(b) for applicant delay in responding to the Office action mailed September 28, 2004 should be 6 days, not 5 days. Applicants state that the response was received on

January 3, 2005, not January 2, 2005. In support thereof, applicants provide a copy of their itemized and date-stamped postcard.

The record has been reviewed and applicants are correct. The response appears in the application file with a date-stamp of receipt thereon of January 3, 2005. Accordingly, the period of reduction is 6 days.

A review of the application history further reveals an additional basis for entry of a period of reduction. Pursuant to § 1.704(c)(8):

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

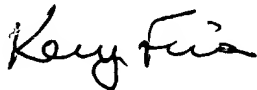
In this instance, after a response had been filed on May 9, 2005, on May 23, 2005, applicants filed an Information Disclosure Statement (IDS). This IDS was not expressly requested by the examiner, and did not include a §1.704(d) statement. Thus, a reduction of 14 days should have been entered for its filing.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is five hundred eighty-four (584) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to Technology Center AU 2613 for consideration by the examiner of the IDS filed May 23, 2005. Thereafter, the application will be forwarded to the Office of Patent Publication for issuance of the application.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in cursive script, appearing to read "Kery Fries".

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of adjusted PALM calculation